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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

-----x

3 UNITED STATES OF AMERICA,

4 v.

04 CR 356 (KBF)

5 HAROON ASWAT,

6 Defendant.

7 -----x

8 New York, N.Y.

9 March 30, 2015

1:15 p.m.

10 Before:

11 HON. KATHERINE B. FORREST,

12 District Judge

13
14 APPEARANCES

15 PREET BHARARA,

16 United States Attorney for the
Southern District of New York

17 IAN P. MCGINLEY

SHANE STANSBURY

18 JOHN P. CRONAN

Assistant United States Attorney

19 PETER QUIJANO

20 ANNA SIDERIS

Attorneys for Defendant

21 ALSO PRESENT: GEORGE COREY, Special Agent

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1 THE DEPUTY CLERK: In the matter of United States of
2 America versus Haroon Rashid Aswat, 04 CR 356.

3 Counsel, please state your names for the record.

4 MR. MCGINLEY: Good afternoon, your Honor. Ian
5 McGinley, Shane Stansbury and John Cronan, for the government,
6 and we're joined at counsel table by George Corey, an
7 investigator in our office.

8 THE COURT: All right. Good afternoon to all three of
9 you.

10 MS. SIDERIS: Good afternoon, Judge Forrest. For the
11 defendant, Haroon Rashid Aswat, Anna Sideris and Peter Quijano.

12 Mr. Aswat is present and ready to proceed.

13 THE COURT: All right. Thank you. Good afternoon,
14 all of you.

15 We are here today because the Court has received a
16 signed plea agreement between Mr. Aswat and the government
17 indicating that Mr. Aswat is contemplating changing his plea on
18 two counts, Counts Five and Six of the indictment, from not
19 guilty to guilty. And the purpose of this proceeding today is
20 to go through the matters relating to that potential plea.
21 That's what I have on the agenda.

22 Does anyone else have anything else on the agenda?

23 MR. MCGINLEY: No, your Honor.

24 MS. SIDERIS: No, your Honor.

25 THE COURT: All right. Thank you.

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1 So, Mr. Aswat, it's very important that you understand
2 at the outset that even though the Court has received a copy of
3 the letter between you and the government, you have not yet
4 entered a guilty plea. And we are going to go through various
5 rights that you have and various rights that you would give up
6 if you, in fact, decide to plead guilty today. But you haven't
7 yet entered a plea, so if you change your mind, when I get to
8 that part of the session today, and I ask you, how do you
9 plead, you can make your final decision at that time.

10 Do you understand?

11 THE DEFENDANT: Yes, your Honor.

12 THE COURT: I can't hear you.

13 THE DEFENDANT: Yes, your Honor.

14 THE COURT: Thank you.

15 I want to make sure that your mind is clear right now,
16 and that you are able to focus and concentrate on the matters
17 that we are going to go over today, so we are going to do what
18 we always do here at this point, which is swear you in, and
19 have my deputy swear you in, and have you stand and ask you
20 some questions. So why don't you go ahead. Please stand,
21 Mr. Aswat.

22 (Defendant sworn)

23 THE DEPUTY CLERK: State your full name for the
24 record.

25 THE DEFENDANT: Haroon Rashid Aswat.

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1 THE COURT: Mr. Aswat, do you understand that you are
2 now under oath, and you have to answer my questions truthfully
3 or you could be prosecuted for perjury or lying to the Court?

4 THE DEFENDANT: I do, your Honor.

5 THE COURT: All right. Thank you.

6 How old are you, sir?

7 THE DEFENDANT: Forty.

8 THE COURT: Where were you born?

9 THE DEFENDANT: In the U.K, in Yorkshire.

10 THE COURT: You can go ahead and sit down, it's okay,
11 and that way --

12 Let's see, is that mic working?

13 Yes. So pull it up as close as you need it to be.
14 And so you were born in Yorkshire?

15 THE DEFENDANT: Yes.

16 THE COURT: In England?

17 THE DEFENDANT: Yes, your Honor.

18 THE COURT: Do you understand that if you enter a
19 guilty plea today, deportation is presumptively mandatory?

20 THE DEFENDANT: I do, your Honor.

21 THE COURT: I take it you never became a U.S. citizen;
22 is that right?

23 THE DEFENDANT: I didn't.

24 THE COURT: Are you married?

25 THE DEFENDANT: No.

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1 THE COURT: Do you have any children?

2 THE DEFENDANT: I don't.

3 THE COURT: Have you at any point in time been treated
4 for a drug addiction?

5 THE DEFENDANT: No, your Honor.

6 THE COURT: Have you at any point in time been treated
7 or hospitalized for any kind of psychological condition or
8 mental illness?

9 THE DEFENDANT: Yes, your Honor.

10 THE COURT: Are you currently under treatment?

11 THE DEFENDANT: I am, your Honor.

12 THE COURT: And do you know what the diagnosis is, if
13 there is one?

14 THE DEFENDANT: Schizophrenia.

15 THE COURT: Are you currently taking medication for
16 that?

17 THE DEFENDANT: I am, your Honor.

18 THE COURT: Are you taking medication in the amounts
19 that are prescribed to you by the healthcare professionals?

20 THE DEFENDANT: Yes, your Honor.

21 THE COURT: Are you experiencing any kind of auditory
22 or visual hallucinations as you sit here in court right now?

23 THE DEFENDANT: No, your Honor.

24 THE COURT: Is your mind clear as you sit here in
25 court right now?

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1 THE DEFENDANT: Yes, your Honor.

2 THE COURT: Do you understand why you're here?

3 THE DEFENDANT: I do, your Honor.

4 THE COURT: What was the highest level of schooling
5 that you completed?

6 THE DEFENDANT: I went to college. Two years in
7 college.

8 THE COURT: Did you finish college?

9 THE DEFENDANT: More or less, yes.

10 THE COURT: All right. Did you actually obtain a
11 degree?

12 THE DEFENDANT: No, your Honor.

13 THE COURT: At the time that you were in college, were
14 you also experiencing any symptoms of any kind of mental
15 illness during that period of time?

16 THE DEFENDANT: No, your Honor.

17 THE COURT: What was the time when those symptoms
18 began?

19 THE DEFENDANT: When I was around 20 years old.

20 THE COURT: 20 years old? And how old are you right
21 now?

22 THE DEFENDANT: Forty.

23 THE COURT: So you've had symptoms of schizophrenia
24 for the last 20 years, would that be fair?

25 THE DEFENDANT: Yes, your Honor.

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1 THE COURT: Do you have any other mental conditions
2 apart from a diagnosis of schizophrenia?

3 THE DEFENDANT: No, your Honor.

4 THE COURT: Did you meet with your lawyers before
5 signing the plea agreement to discuss the terms of the plea
6 agreement?

7 THE DEFENDANT: I did, your Honor.

8 THE COURT: At the time that you were meeting with
9 your lawyers and reviewing the terms of your plea agreement,
10 was your mind clear at that time so that you were able to
11 concentrate on what you were agreeing to?

12 THE DEFENDANT: It was, your Honor.

13 THE COURT: Does either counsel have any doubt as to
14 Mr. Aswat's competency to consider now the matters that we are
15 going to go over today and to enter a plea as to Counts Five
16 and Six at the appropriate time, should he choose to do so?

17 MR. MCGINLEY: No, your Honor.

18 MS. SIDERIS: No, your Honor.

19 THE COURT: The Court does find that Mr. Aswat is
20 clear in his mind. He is certainly competent to enter a plea
21 today. He is looking the Court in the eye. He is answering
22 the Court's questions quite clearly and quite appropriately.
23 So the Court does find that he is competent.

24 The Court makes that finding despite Mr. Aswat's prior
25 history of schizophrenia. That condition is being treated with

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1 medication, and there are no signs or symptoms of that
2 condition as Mr. Aswat sits here in court today.

3 Mr. Aswat, what we are going to do now is talk about
4 certain rights that you have and also certain rights that you
5 will be giving up if you, in fact, enter a plea of guilty.

6 Now, do you understand that you are entitled to a
7 lawyer now at every stage of these legal proceedings against
8 you?

9 THE DEFENDANT: I do, your Honor.

10 THE COURT: And you are represented by Ms. Sideris and
11 Mr. Quijano?

12 THE DEFENDANT: I am, your Honor.

13 THE COURT: And have you met with both of them?

14 THE DEFENDANT: I have, your Honor.

15 THE COURT: Are you satisfied with their
16 representation of you?

17 THE DEFENDANT: I am, your Honor.

18 THE COURT: Now, do you understand that if you went to
19 trial in this matter, you would be entitled to a lawyer to
20 represent you at that trial? Do you understand that?

21 THE DEFENDANT: I do, your Honor.

22 THE COURT: Do you understand that if you enter a plea
23 of guilty to Counts Five and Six, you will be giving up your
24 right to go to trial? Do you understand that?

25 THE DEFENDANT: I do, your Honor.

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1 THE COURT: Now, do you think you have had enough time
2 to talk to Ms. Sideris and Mr. Quijano about the terms of your
3 letter agreement with the government?

4 THE DEFENDANT: I have, your Honor.

5 THE COURT: Now let's talk about the trial, and let's
6 talk about the rights that you would have at that trial and
7 more about what you would be giving up if you enter a guilty
8 plea.

9 Do you understand, Mr. Aswat, that under the laws of
10 the United States, you are entitled to a public trial on the
11 charges contained in the indictment against you?

12 THE DEFENDANT: I do, your Honor.

13 THE COURT: And do you understand that before you
14 could be convicted of any of the charges in the indictment, a
15 jury of 12 people would have to agree unanimously that you were
16 guilty?

17 THE DEFENDANT: I do, your Honor.

18 THE COURT: And do you understand that at that trial,
19 you would be presumed innocent, and the government would bear
20 the burden of proving that you were guilty beyond a reasonable
21 doubt before you could be found guilty? Do you understand
22 that?

23 THE DEFENDANT: I do, your Honor.

24 THE COURT: Do you understand that you then would
25 never have to prove that you were innocent, the government

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1 would always bear the burden of proof?

2 THE DEFENDANT: I do understand, your Honor.

3 THE COURT: Do you understand that at that trial and
4 at every stage of your case, again, you would have the right to
5 be represented by counsel? Do you understand that?

6 THE DEFENDANT: I do, your Honor.

7 THE COURT: And do you understand that during a trial,
8 any witnesses for the government would have to come to court
9 and testify in front of you, and your lawyers would have the
10 opportunity to cross-examine those witnesses, to object to
11 evidence offered by the government, and to subpoena witnesses
12 to come to court, and testify on your behalf, and to seek to
13 offer documents and evidence on your behalf? Do you understand
14 those things?

15 THE DEFENDANT: I do, your Honor.

16 THE COURT: And do you understand that if you enter a
17 guilty plea here today, you will be losing your right to go to
18 trial?

19 THE DEFENDANT: I do, your Honor.

20 THE COURT: And do you understand that you will never
21 be able to withdraw that plea once you've entered it? Once
22 you've entered that plea, you'll be bound by that plea. Do you
23 understand?

24 THE DEFENDANT: I do, your Honor.

25 THE COURT: Now, do you understand that if you were

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1 convicted after a trial, you would retain all of your appeal
2 rights to such conviction, but if you plead guilty here today
3 pursuant to this letter agreement between you and the
4 government, you're giving up certain important appellate
5 rights?

6 THE DEFENDANT: I do, your Honor.

7 THE COURT: You understand that?

8 THE DEFENDANT: I do, your Honor.

9 THE COURT: Now, if you decide to plead guilty, there
10 is going to be a point in these proceedings when you're going
11 to have to give up your right not to incriminate yourself
12 because it's very important that if you plead guilty, it's
13 because you are, in fact, guilty of the crimes that you are
14 pleading guilty to. So part of what a court does during this
15 kind of change-of-plea proceeding is the court is going to ask
16 you -- I'm going to ask you why do you think you're guilty of
17 Counts Five and Six. And when you answer that question, you're
18 giving up your right not to incriminate yourself, not to give
19 evidence against yourself, to the extent of your answer.

20 Do you understand that?

21 THE DEFENDANT: I do, your Honor.

22 THE COURT: Now, let's talk about this letter
23 agreement between you and the government and about the charges
24 that you have expressed an intention possibly to enter a guilty
25 plea with respect to. The first thing I'm going to do is have

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1 my deputy mark the copy that I have received as Court Exhibit
2 1, and I am going to ask you, Mr. Aswat, if it's, in fact, your
3 signature on the last page above the line that says "Aswat"?

4 THE DEFENDANT: That's my signature.

5 THE COURT: All right. And did you review this
6 agreement between yourself and the government before you signed
7 it?

8 THE DEFENDANT: Yes, your Honor.

9 THE COURT: And did you discuss it with your lawyers
10 before you signed it?

11 THE DEFENDANT: I did, your Honor.

12 THE COURT: Do you understand what you're agreeing to
13 in this agreement dated March 25th, 2015?

14 THE DEFENDANT: Yes, your Honor.

15 THE COURT: And have you had enough time to talk about
16 your agreement with your lawyers?

17 THE DEFENDANT: I have, your Honor.

18 THE COURT: If you take a look at the first page, you
19 will see there that this agreement says that the government is
20 willing to accept a plea to Counts Five and Six of the
21 agreement that contains the charges against you. Do you see
22 that?

23 THE DEFENDANT: Yes, your Honor.

24 THE COURT: And do you understand that in Count Five,
25 you're charged with conspiracy to provide material support and

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1 resources to a foreign terrorist organization; namely,
2 al Qaeda? Do you see that?

3 THE DEFENDANT: Yes, I do.

4 THE COURT: Do you understand that there are certain
5 maximum penalties that the Court can impose for that crime?
6 Those maximum penalties include a maximum ten-year term of
7 imprisonment. Do you understand that?

8 THE DEFENDANT: Yes, your Honor.

9 THE COURT: And do you understand that this crime also
10 carries a maximum term of supervised release of three years?
11 Do you understand that?

12 THE DEFENDANT: Yes, your Honor.

13 THE COURT: Do you understand that this crime also
14 carries a maximum fine of \$250,000 and a \$100 mandatory special
15 assessment?

16 THE DEFENDANT: Yes, your Honor.

17 THE COURT: Now, Count Six carries a separate series
18 of possible penalties. It's a separate crime. Do you
19 understand that?

20 THE DEFENDANT: Yes, your Honor.

21 THE COURT: And Count Six charges you with providing
22 material support and resources to a foreign terrorist
23 organization; namely, al Qaeda. Do you see that?

24 THE DEFENDANT: Yes, your Honor.

25 THE COURT: Do you understand that Count Six itself

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1 carries a separate maximum term of imprisonment of ten years?

2 THE DEFENDANT: Yes, your Honor.

3 THE COURT: And Count Six carries a maximum term of
4 supervised release of three years. Do you understand that?

5 THE DEFENDANT: Yes, your Honor.

6 THE COURT: And Count Six also carries a maximum fine
7 of \$250,000 and a \$100 mandatory special assessment. Do you
8 understand that?

9 THE DEFENDANT: Yes, your Honor.

10 THE COURT: Now, do you understand that the Court can
11 and will separately pronounce sentence for Counts Five and Six
12 at your sentencing if you plead guilty here today, and the
13 Court may decide to run those sentences together either
14 concurrently, which means the same time, or consecutively,
15 which means one after the other? Do you understand that?

16 THE DEFENDANT: Yes, your Honor.

17 THE COURT: So do you understand that the Court could
18 potentially, if you plead guilty pursuant to this agreement
19 today, sentence you to up to a statutory maximum of 20 years'
20 imprisonment? Do you understand that?

21 THE DEFENDANT: Yes, your Honor.

22 THE COURT: Now, in this agreement with the
23 government, if you turn to the next page, it also includes an
24 agreement between you and the government of what we call a
25 stipulated offense level. That means an agreed-to offense

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1 level. And if you turn to the top of page 3 and work your way
2 backwards, the top of page 3 says that you're agreeing with the
3 government that your offense level is 37, and that the offense
4 level is reached by a calculation based on what's on page 2,
5 which is a base offense level of 26, an increase for a firearms
6 charge, and an increase due to the fact that the crime involves
7 felonies that involved or were intended to promote terrorism,
8 and then a reduction for demonstration of acceptance of
9 responsibility, and that together, it amounts to 40, and then
10 we decrease by three, and it ends up being 37.

11 Do you understand that?

12 THE DEFENDANT: I do, your Honor.

13 THE COURT: Now, because your offense level is 37, but
14 your statutory maximum is 20 years, you're agreeing with the
15 government, on page 3, that your stipulated guidelines range is
16 20 years. Do you understand that?

17 THE DEFENDANT: I do, your Honor.

18 THE COURT: Now, you're also agreeing that your
19 Criminal History Category is VI, it's a VI. Do you understand
20 that?

21 THE DEFENDANT: I do, your Honor.

22 THE COURT: Now, do you understand you will be held to
23 your agreement about a stipulated guidelines range and a
24 stipulated offense level if you enter a plea of guilty pursuant
25 to this agreement here today?

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1 THE DEFENDANT: I do, your Honor.

2 THE COURT: Now, do you understand that the Court is
3 not a party to this agreement? This is an agreement between
4 you, Mr. Aswat, and the government. It's not an agreement
5 binding on the Court. Do you understand that?

6 THE DEFENDANT: I do, your Honor.

7 THE COURT: That means that the Court can sentence you
8 as it deems appropriate up to, but not exceeding 20 years, but
9 ultimately, the Court will make its own determination.

10 Do you understand that?

11 THE DEFENDANT: I do, your Honor.

12 THE COURT: Now, in this agreement, if you turn to the
13 next page, it's page 4 -- let me just say that there are
14 lots -- every term in this agreement is important, and I am
15 only pointing out just a few of them, but every term is
16 important, but I want to have you turn to the section that
17 relates to appeal rights that you're giving up.

18 On page 4, it states that in this agreement, you are
19 agreeing not to file a direct appeal or to bring a collateral
20 challenge, including, but not limited to, a petition for habeas
21 corpus, and that you're also agreeing not to seek a sentence
22 modification, meaning a change in your sentence, of any
23 sentence that is up to and below 20 years.

24 Do you understand that?

25 THE DEFENDANT: I do, your Honor.

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1 THE COURT: So I want to be very clear about what that
2 means. Do you understand that if you plead guilty pursuant to
3 this agreement today, if the Court were to sentence you to a
4 term of imprisonment of 20 years, you are giving up your appeal
5 right to seek a modification of that sentence? Do you
6 understand that?

7 THE DEFENDANT: I do, your Honor.

8 THE COURT: So do you understand that even if you are
9 hoping that your sentence will be a particular sentence, and
10 it's not, you are not later going to be able to withdraw your
11 plea because you're unhappy with your sentence, and you're
12 giving up your right to appeal your sentence up to 20 years,
13 which is the statutory Maximum. Do you understand that?

14 THE DEFENDANT: I do, your Honor.

15 THE COURT: Now, in this agreement, you are also
16 agreeing to certain particular immigration consequences, and
17 those are on pages 5, 6 and 7. You are agreeing to the entry
18 of a stipulated judicial order of removal. Do you understand
19 that?

20 It means I can enter an order of removal today or at
21 any point in time that the Court deems appropriate. Do you
22 understand that?

23 THE DEFENDANT: I do, your Honor.

24 THE COURT: Do you understand that you are voluntarily
25 and knowingly -- this is in the last paragraph of page 5 --

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1 giving up your right to notice and a hearing and giving up any
2 rights of appeal that you may have for that stipulated removal
3 order? Do you understand that?

4 THE DEFENDANT: I do, your Honor.

5 THE COURT: And do you understand that on page 6 --
6 it's now the first full paragraph -- it says that you're
7 agreeing to waive your right to any and all forms of relief or
8 protection from removal, deportation, or exclusion under the
9 immigration laws? Do you understand that?

10 THE DEFENDANT: Yes, your Honor.

11 THE COURT: And do you understand that you're also, in
12 the next paragraph, requesting that an order be issued by this
13 Court for your removal? You're actually affirmatively asking
14 for that. Do you understand that?

15 THE DEFENDANT: I do, your Honor.

16 THE COURT: And you're also agreeing to make the
17 judicial order of removal, meaning when the Court signs that
18 order, you're agreeing to make that a public document. Do you
19 understand that?

20 THE DEFENDANT: I do, your Honor.

21 THE COURT: And you're also agreeing to assist the
22 immigration authorities, ICE, in the execution of your removal,
23 meaning in making your removal actually occur. Do you
24 understand that?

25 THE DEFENDANT: I do, your Honor.

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1 THE COURT: You are also conceding that the entry of
2 removal, the judicial order of removal, makes you immediately
3 excludable and permanently inadmissible to the United States.
4 Do you understand that?

5 THE DEFENDANT: Yes, your Honor.

6 THE COURT: Do you understand that that means you will
7 never be able to enter the United States again?

8 THE DEFENDANT: Yes, your Honor.

9 THE COURT: Now, do you understand that if you went to
10 trial, and you were convicted after a trial, you would not be
11 giving up these appeal rights that we talked about or have the
12 immigration consequences that we have talked about in terms of
13 what you have agreed to? Do you understand that?

14 THE DEFENDANT: Yes, your Honor.

15 THE COURT: Has anybody promised you what your
16 sentence is going to be?

17 THE DEFENDANT: No, your Honor.

18 THE COURT: Has anybody promised you that there will
19 be a transfer of your sentence to any other jurisdiction?

20 THE DEFENDANT: No, your Honor.

21 THE COURT: Has anybody promised you that you will be
22 transferred to England to serve your sentence?

23 THE DEFENDANT: No, your Honor.

24 THE COURT: Has anybody made any commitment to you
25 that you will, in fact, be transferred?

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1 THE DEFENDANT: No, your Honor.

2 THE COURT: So you understand that if you plead guilty
3 here today, and you are not, in fact, transferred, you will not
4 be able to withdraw your plea just based on the fact that you
5 are not transferred? Are you aware of that?

6 THE DEFENDANT: Yes, your Honor.

7 THE COURT: Did anybody force you to sign this
8 agreement between you and the government?

9 THE DEFENDANT: No, your Honor.

10 THE COURT: Did anybody coerce you in any way to try
11 to make you sign this agreement?

12 THE DEFENDANT: No, your Honor.

13 THE COURT: Did you sign this agreement knowingly and
14 voluntarily of your own free will?

15 THE DEFENDANT: I did, your Honor.

16 THE COURT: Do you have any promise or commitment from
17 the government that is not contained in this letter agreement
18 between you and the government dated March 25th, 2015?

19 THE DEFENDANT: No, your Honor.

20 THE COURT: Have you discussed all of the appeal
21 rights and immigration consequences that you're giving up and
22 that would occur as a result of your plea agreement with your
23 lawyers?

24 THE DEFENDANT: Yes, your Honor.

25 THE COURT: Do you understand that in terms of appeal

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1 rights -- let's go back to page 6 for a moment, there are a
2 couple of other things I want to bring out. You are waiving
3 your right here to any claim that you were persecuted in or
4 have a present fear of persecution in the United Kingdom on
5 account of your race, religion, nationality, membership in a
6 particular social group or political opinion. Do you
7 understand you're giving up that right?

8 THE DEFENDANT: I do, your Honor.

9 THE COURT: And do you understand you're also giving
10 up any right to claim that you were tortured in or have a
11 present fear of torture in the United Kingdom?

12 THE DEFENDANT: Yes, your Honor.

13 THE COURT: Now I wanted to discuss with you the
14 factual basis for your plea.

15 Mr. McGinley?

16 MR. MCGINLEY: Thank you, your Honor. I don't believe
17 you allocuted the defendant that he would be giving up his
18 right to subpoena witnesses at a trial.

19 THE COURT: I did say early on did he understand that
20 his counsel would have the right to subpoena witnesses and
21 object to evidence on his behalf, so I think it was covered.

22 Is there something more you want to do in that regard?

23 MR. MCGINLEY: That was all, your Honor.

24 THE COURT: Okay. We covered that.

25 Mr. Aswat, what I want to do now is, I'm going to have

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1 the government set forth the elements of the crimes for Counts
2 Five and Six on the record, and then I'm going to ask you why
3 you think you're guilty of those crimes. The reason we have
4 them set forth the elements is because when I listen to what
5 you say you did, I need to make sure that it amounts to the
6 crime as charged for Counts Five and six.

7 So, Mr. McGinley?

8 MR. MCGINLEY: Thank you, your Honor.

9 I'll start with Count Six, the substantive count,
10 which charges the defendant with providing material support and
11 resources to a foreign terrorist organization and aiding and
12 abetting that crime in violation of Title 18, United States
13 Code, Section 2339(b) and Section 2, the aiding and abetting
14 statute.

15 At the time of the defendant's conduct, that statute,
16 Section 2339(b), provided in relevant part: "Whoever within
17 the United States or subject to the jurisdiction of the United
18 States knowingly provides material support or resources to a
19 foreign terrorist organization shall be guilty of a crime."

20 The elements of this crime are as follows:

21 First, that the defendant provided material support or
22 resources. Material support includes training and providing
23 personnel;

24 Second, that the defendant acted knowingly;

25 Third, that the defendant provided such support or

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1 resources to a designated foreign terrorist organization
2 knowing that the organization is designated by the Secretary of
3 State as a foreign terrorist organization, or that the
4 defendant knew that the organization engaged in terrorist
5 activity, or that the defendant knew that the organization
6 engaged in terrorism;

7 And, fourth, that some portion of the conduct
8 constituting the offense occurred within the United States or
9 the defendant was subject to the jurisdiction of the United
10 States.

11 Count Five charges the defendant with conspiracy to
12 provide material support and resources to a foreign terrorist
13 organization. That crime has the elements that I just listed.
14 The crime of conspiring to violate Section 2339(b) has three
15 elements:

16 First, that an unlawful agreement among two or more
17 people to violate the law in fact existed here. Here, the
18 agreement was to provide material support and resources to a
19 foreign terrorist organization;

20 Second, that the defendant knowingly and intentionally
21 joined the conspiracy; that is, that he knowingly and
22 intentionally joined with at least one other person in an
23 agreement to violate the law;

24 And, third, that an act to further the conspiracy
25 occurred.

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1 THE COURT: So, Mr. Aswat, it's time for you to tell
2 me why you think you're guilty of Counts Five and Six, if you
3 want to proceed with the plea.

4 MR. QUIJANO: Should he stand, your Honor?

5 THE COURT: Because his voice is low, why don't we
6 have him sit there. It's fine with me.

7 MR. QUIJANO: Thank you, your Honor.

8 THE DEFENDANT: As to Counts Five and Six, from
9 approximately October 1999 until early 2000, in Bly, Oregon,
10 London, England, and elsewhere, I agreed with others to provide
11 training to others on behalf of a terrorist organization.

12 Specifically, in the fall of 1999, at the direction of
13 Abu Hamza, I traveled to Bly, Oregon, to assist Oussama Kassir
14 in the creation of a training camp and the training of others,
15 who wanted to participate in jihad on behalf of a terrorist
16 organization.

17 At the time, I understood that Abu Hamza and Kassir
18 were associated with an Arab organization that was engaged in
19 terrorist activity and was engaged to terrorism. I later came
20 to know that this Arab organization was known as al Qaeda.

21 While doing these things, I understood it was illegal.

22 THE COURT: All right. Mr. McGinley, let me ask you
23 when the knowing portion needs to have occurred and what the
24 government's view as to how that element ties in.

25 MR. MCGINLEY: Yes, your Honor. The allocation

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1 here -- and we've discussed this extensively with defense
2 counsel -- the defendant has allocuted to knowing both that he
3 was assisting a terrorist organization that was engaged in
4 terrorist activity and engaged in terrorism. Although he did
5 not know the exact name al Qaeda, I believe, until later, that
6 is not required because he knew at the time that he was joining
7 a terrorist organization engaged in terrorism and terrorist
8 activity.

9 THE COURT: All right.

10 So, Mr. Aswat, I just want to make sure that it's
11 correct that at the time that you were engaged in this conduct,
12 you knew that you were assisting a terrorist organization?

13 THE DEFENDANT: Yes, your Honor.

14 THE COURT: And did you understand that that
15 organization was involved in terrorist activity?

16 THE DEFENDANT: I did, your Honor.

17 THE COURT: And you knew that at the time you were
18 engaged in these acts?

19 THE DEFENDANT: Yes, your Honor.

20 THE COURT: All right.

21 Does the government believe that there is a sufficient
22 factual predicate for a plea of guilty, should the defendant
23 choose to enter one?

24 MR. McGINLEY: Yes, your Honor.

25 THE COURT: Ms. Sideris, Mr. Quijano, do you believe

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1 that there is any reason why your client should not enter a
2 plea of guilty, should he choose to do so?

3 MS. SIDERIS: No, your Honor.

4 THE COURT: Mr. Aswat, the decision is ultimately a
5 decision which only you and you alone can make. As I said at
6 the outset of this proceeding today, you haven't yet pled
7 guilty to these crimes. Only when you say in open court
8 "guilty," will an adjudication of guilty be entered against
9 you. Until that time, you still have your plea of not guilty.
10 So you have to make your final decision, and I am going to ask
11 you as to each count how you plead, and you will need to state
12 out loud how you plead as to each count.

13 So how now do you plead, Mr. Aswat, to Count Five,
14 guilty or not guilty?

15 THE DEFENDANT: Guilty, your Honor.

16 THE COURT: And how do you plead, sir, to Count Six,
17 guilty or not guilty?

18 THE DEFENDANT: Guilty, your Honor.

19 THE COURT: Since the Court is satisfied that you are,
20 in fact, guilty of the crimes charged in Counts Five and Six,
21 based upon your allocution before me here today, and because
22 the Court is satisfied that you know of your rights, including
23 your right to go to trial, your right to counsel, and that you
24 understand the possible penalties that could be imposed by
25 entering a guilty plea, I accept your plea as knowing, and

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1 voluntary, and adequate.

2 So here's what we do next: What we do next is we'll
3 set a sentencing date. I have also been presented with an
4 order of removal to sign, and what I want to understand is
5 whether you're seeking a signature on that order of removal,
6 which I have reviewed, today or subsequent to and at
7 sentencing. I want to make sure that the defendant is not sent
8 someplace by virtue of the order being implemented prior to
9 sentencing.

10 MR. MCGINLEY: Yes, thank you, your Honor. It is for
11 sentencing.

12 THE COURT: All right. So the Court will hold that
13 order in abeyance until sentencing has occurred.

14 Yes. Go ahead, Mr. McGinley.

15 MR. MCGINLEY: While we were just on the plea, your
16 Honor, I did want to proffer the properness of venue in this
17 court. Venue is proper because the defendant was first brought
18 to the Southern District of New York, the White Plains airport,
19 from his extradition from the U.K. He first landed in the
20 Southern District.

21 THE COURT: All right.

22 Ms. Sideris, do you agree to that proffer?

23 MS. SIDERIS: We agree, your Honor.

24 THE COURT: All right. Thank you.

25 Then what we will do next is set a sentencing date.

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1 And probation, Mr. Aswat, is going to want to do a report.
2 They do something called a presentence investigation report for
3 all individuals who are coming before the court for sentencing,
4 and it contains a lot of information about who you are, your
5 background, any particular circumstances that the Court should
6 be aware of in connection with your sentencing.

7 The date that I received that might work for you folks
8 would be July 31st, 2015, at 11:00 a.m.

9 Is that date acceptable to you folks? Ms. Sideris?

10 MS. SIDERIS: Yes, your Honor.

11 MR. MCGINLEY: Yes, your Honor.

12 THE COURT: All right.

13 Now, I do try to hold sentencing dates, and so I know
14 that this is a summertime date, and so I'm assuming that you
15 folks will clear it on your calendar. If something comes up
16 unexpected, and you are ordered to be someplace, I can't do
17 much about that, but I would hope that you would be able to
18 really try to keep this date.

19 Is that understood, Mr. McGinley?

20 MR. MCGINLEY: Yes, your Honor.

21 THE COURT: Ms. Sideris?

22 MS. SIDERIS: Yes, your Honor.

23 THE COURT: All right. Thank you.

24 So 7/31/2015, at 11:00 a.m. Defense submission on
25 July 17th. Government's submission on July 24th.

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1 Is there anything else we should do at this time?

2 MR. MCGINLEY: Not from the government, your Honor.

3 MS. SIDERIS: No, your Honor.

4 THE COURT: All right. Thank you. Then we are
5 adjourned.

6 MR. QUIJANO: Thank you, your Honor.

7 MS. SIDERIS: Thank you, your Honor.

8 (Adjourned)

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